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FEDERAL COMMUNICATIONS COMMISSION
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MAY 6 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Part 90 of the) PR Docket No. 92-209
Commission's Rules to Expand)
Coordination of the 800 MHz) RM-7965
General Category Channels)

To: The Commission

PETITION FOR RECONSIDERATION
OF THE
NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.

The National Association of Business and Educational Radio, Inc. ("NABER"), pursuant to Section 1.429 of the Commission's Rules and Regulations, 47 C.F.R. § 1.429, respectfully requests that the Commission reconsider its action taken in the Report and Order issued in the above-styled proceeding.¹

I. PRELIMINARY STATEMENT

NABER filed Comments and Reply Comments in this proceeding. The Commission, although considering NABER's recommendations, did not take action consistent with such recommendations. NABER, therefore, requests reconsideration by the Commission of its action in this proceeding.

By its Report and Order, the Commission amended its rules to permit an applicant seeking to license 800 MHz General Category channels in the conventional Specialized Mobile Radio ("SMR") Service ("GX radio service") to submit such application to any one of the three certified frequency coordinators for applications

¹ Report and Order (FCC 93-247), PR Docket No. 92-209, adopted May 11, 1993, 8 FCC Rcd _____ (1993).

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above 800 MHz. Prior to the adoption of the Report and Order, NABER was the sole frequency coordinator certified to coordinate the GX radio service applications. The Commission was requested to broaden the coordination options for the GX radio service through a Petition for Rule Making filed by the Industrial Telecommunications Association, Inc. ("ITA"). In its Petition, ITA argued that GX radio service applications should be provided the same coordination choice as were the trunked 800 MHz SMR radio service applicants which were seeking to expand existing 800 MHz SMR systems with General Category channels. The Commission tentatively agreed with ITA's proposal and initiated the rule

Association, Inc. ("AMTA") to implement cross-coordination procedures for the General Category channels prior to the submission of such applications to the Commission.

The Commission rejected each of NABER's arguments and took action as initially proposed in its Notice of Proposed Rule Making in this proceeding. NABER believes that the Commission did not give due consideration to the matters brought to its attention in the proceeding and that the Commission's action was arbitrary and capricious. Therefore, NABER asks that the Commission reconsider its action in adopting the amendment to Section 90.615(a).

II. DISCUSSION

A. Cross-Coordination

The Commission declined to require the frequency coordinators to adopt concurrence procedures for the General Category channels. NABER favors the re-institution of the "cross-coordination" procedures as were in effect in 1990 when the Commission adopted its Report and Order to allow trunking of the General Category channels.² As discussed in NABER's Reply Comments, prior to the Commission's adoption of the rule permitting trunking of General Category channels, NABER, ITA and APCO were cross-coordinating applications for the then "old" conventional channels before the applications were filed with the Commission. The procedure worked well and was beneficial to the applicants. When the Commission issued its order, it addressed only notification between the

² Report and Order (FCC 90-234), PR Docket No. 87-213, 5 FCC Rcd 4016 (1990).

coordinators which has become the standard rather than the far-preferable method of cross-coordination.

NABER disagrees with the Commission that "timely notification" between the coordinators is sufficient. There have been a number of cases in which coordination of General Category frequencies have been made and forwarded to the Commission, and then the coordinator and the applicant receive notice of the prior coordination of the frequency. These matters result in ineffective, inefficient frequency recommendations and disgruntled FCC applicants. NABER is not seeking "micromanagement" of the frequency coordination procedures by the Commission but rather Commission oversight to ensure that the application process is effectively and efficiently managed.

The Commission's reluctance to implement a specific procedure for a workable notification procedure between the 800 MHz coordinators for General Category channels is inconsistent with its rules pertaining to interservice coordination³ and the coordination of secondary fixed stations in the 450-470 MHz band.⁴ Further, should the Commission fail to act in this proceeding to impose some standard of cross-coordination of General Category channels, NABER is concerned with the manner in which the Commission would initiate multiple coordinators in the consolidated pools below 512 MHz that

³ 47 C.F.R. § 90.176.

⁴ Report and Order (FCC 92-233), PR Docket No. 91-66, 7 FCC Rcd 3498 (1992).

it has proposed in the refarming docket.⁵

Accordingly, NABER recommends that the Commission require that the certified frequency coordinators of the General Category channels in the 800 MHz band send a notification to the other two coordinators when a recommendation of a General Category channel has been made. The other coordinators will then have a ten (10) business day period in which to object or concur with the recommendation. Should the other coordinators fail to respond within the required period, the application could then be submitted to the Commission. However, should concurrence from the other coordinators be received prior to the expiration of the ten-day period, the application could be submitted to the Commission upon all concurrences being received.

B. Representativeness Issue

In response to NABER's argument relating to the representativeness issue, the Commission states that there is no entity which is representative of SMR applicants for conventional systems. The Commission asserts that it declined to certify a coordinator for SMR pool channels because no one entity was representative of the industry and the industry was just evolving. Therefore, the Commission reasons the same holds true for conventional SMR systems.⁶ However, the Commission decision in

⁵ Notice of Proposed Rule Making (FCC 92-469), PR Docket No. 92-235, 7 FCC Rcd 8105 (1992).

⁶ The Commission fails to identify that the entities seeking to be certified as frequency coordinators for the SMR category included entities other than just NABER, ITA and APCO. Thus, the issue of coordination of General Category channels and SMR category

1986 to certify NABER as the frequency coordinator for the conventional SMR service is inconsistent with the Commission's statement.

Further, the Commission states that NABER was re-certified as the coordinator for conventional SMR systems without discussion in 1990, and cannot be relied upon to assert any intent by the Commission to deem NABER a representative of the conventional SMR radio service. Thus, the Commission maintains that the certification of NABER as a sole coordinator of conventional SMR applications results in disparate treatment of SMR applicants and such treatment is unwarranted and unreasonable.

NABER does not necessarily disagree with the Commission's decision to broaden the coordination options for the conventional SMR applicants seeking General Category channels, but does disagree with the Commission's reasoning in adopting the proposed rule. The record, contrary to the Commission's assertions, is clear that NABER was found to be the most representative of conventional SMR applicants in 1986. The lack of discussion in recertifying NABER as the coordinator in the 1990 proceeding re-affirms the Commission's decision rather than reflecting an oversight by the Commission.

In any event, as NABER argued in its Comments, the Commission's decision to only permit conventional SMR applicants

~~to select one of three certified frequency coordinators without~~

frequency to have the same option results in disparate treatment between these applicants. The Commission's decision to permit only applicants seeking General Category channels for SMR operations to have the broader option is, therefore, arbitrary and capricious.

The Commission had the opportunity, but declined, to issue a Further Notice of Proposed Rule Making to expand the scope of the proceeding to include all General Category channels. In this manner, there would have been an opportunity for notice and hearing. Final action in the proceeding may have been delayed, but the Commission's rules would then be consistent and treat all General Category applicants equally.

Accordingly, the Commission must set aside its decision in this proceeding and maintain the frequency coordination requirements for GX radio service applications, or issue a Further Notice of Proposed Rule Making to incorporate all General Category channels into the proceeding.

WHEREFORE, THE PREMISES CONSIDERED, the National Association of Business and Educational Radio, Inc. respectfully requests the Commission to grant this Petition for Reconsideration, and reverse its decision to certify all three 800 MHz frequency coordinators to coordinate applications seeking General Category channels for